IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4283 OF 2005

Nandkumar Amrutrao Sardesai ... Petitioner

Versus

The Range Forest Officer, Ajara & Ors.. Respondents

Mr. G.R. Rege with Mr. S.M. Railkar for Petitioenr.

Mr. R.M. Patane, A.G.P. for STate.

CORAM : F.I. REBELLO &
MRS ROSHAN DALVI.JJ.
DATED : DECEMBER 21, 2005

P.C.

. Rule. Heard forthwith.

. The Petitioner had applied for transit pass for transporting felled material from Gat No. 118 from village Latgaon, Taluka Ajara. That came to be rejected by order dated 7.5.2005. Hence, the present petition.

. It is the case of the Petitioner that the reason given in the order dated 7.5.2005 is without jurisdiction in as much as, the land belongs to the Petitioner and notification declaring the land as

private forest under the provisions of the Private Forest (Acquisition) Act, 1975 has been held to be illegal. The learned counsel has drawn our attention to the judgment passed in Civil Suit No. 1035 of 1988 by the Jt.Civil Judge, Senior Division, Kolhapur on 31.7.1990. A perusal of the said judgment would show that various issues were framed including whether the petitioners herein were owners in possession of the suit lands. That was held in the affirmative in favour of the Petitioners. Once that be the case, the reasons given on behalf of the Respondents that they are the owners will have to be set aside. In the matter of application of M.P.F. (Acquisition) Act, 1975 the same has been answered in Paragraph 11 by holding that the deeming provisions of Section 3(3) of the M.P.F. Act will be only applicable to private forests as notified by law. In the instant case, it was held that the notification issued is without authority of law. It is also recorded that no documentary evidence has been produced in support of the same.

. On behalf of the Respondents, additional reply

has been filed by Tanaji Patil. In Paragraph 10 it is set out that apart from the provision of the Indian Forest Act, the provisions of Section (2) of the Forest Conservation Act, 1975 will also be attracted and consequently case has been registered against the Petitioner herein for felling the trees from the forests. In these circumstances, it is submitted that no relief ought to be granted in favour of the Petitioner herein.

. The issue before us is whether the respondents could have refused licence for the reasons given in communication dated 7.5.2005. In our opinion, considering the judgment in favour of the Petitioner, the communication of 7.5.2005 is without jurisdiction. However, that does not mean that the petitioner is entitled to reliefs as prayed for.

. The law is now settled that if the land is forest, then it can only be used for non forest purposes, after complying with the provisions of the Forest Conservation Act. That being the case, it will be open to the Deputy Forest Officer,

Kolhapur to pass a fresh order according to law and based on the material available before him. It will be open to the Petitioners within 15 days from today to place all material before the Deputy Forest Officer, Kolhapur Forest Department,Kolhapur. The Deputy Forest Officer, Kolhapur thereafter within four weeks to pass appropriate orders according to law. Rule made absolute accordingly. No order as to costs.;

. It is made clear that if the respondent authority comes to the conclusion that the area is not forest, then to issue necessary passes in favour of the Petitioner according to law.

. Second Appeal No. 229 of 2003 be separated from the present petition and kept independently.

(F.I. REBELLO,J.)

(MRS. ROSHAN DALVI,J.)